

This Opinion is Not a
Precedent of the TTAB

Mailed: May 18, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Louis Poulsen A/S
—

Serial No. 88933093
—

Paras R. Shah and Lisa A. Harkins of Flener IP & Business Law,
for Louis Poulsen A/S.

Mariam Aziz Mahmoudi, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

—
Before Lykos, Greenbaum and Lynch,
Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

Louis Poulsen A/S (“Applicant”) seeks to register on the Principal Register the standard character mark AJ TABLE (TABLE disclaimed) for goods ultimately identified as “Lighting apparatus, namely, table lamps” in International Class 11.¹

Registration was refused under Section 2(d) of the Trademark Act, 15 U.S.C.

¹ Application Serial No. 88933093, filed May 26, 2020, under Section 44(e) of the Trademark Act, based on Denmark Registration No. VR201302559 issued on November 7, 2013, with an expiration date of November 7, 2023.

Citations to the prosecution file refer to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system. Citations to briefs refer to the actual page number, if available, as well as TTABVue, the Board’s online docketing system. The number preceding

§ 1052(d), on the ground that Applicant's mark so resembles the registered marks below that it is likely to cause confusion or mistake or to deceive:

Registration No. 4006907, owned by RAB Lighting Inc., for the standard character mark AJ on the Principal Register for "Lighting fixtures; HID lighting fixtures" in International Class 14;² and

Registration Nos. 4861414 and 4861415, both owned by AJ Produkter AB, for the marks displayed below on the Principal Register,



for various goods and services, including "Furniture, mirrors, picture frames; work benches; parts of furniture, namely, wooden trestle; metallic tables; cabinet work; vice benches, not of metal; transport and loading pallets, not of metal; ladders of wood or plastic; furniture shelves; shelves for filing-cabinets; lockers; shelves for storage; coat hangers; coat stands; office furniture; medicine cabinets; furniture casters, not of metal; umbrella stands; slatted indoor blinds; furniture stands, namely, book stands, coat stands, display stands, and umbrella stands; trolleys for

"TTABVUE" corresponds to the docket entry number; the number(s) following "TTABVUE" refer to the page number(s) of that particular docket entry. *See Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

² Registered August 2, 2011; renewed.

cleaning; duck boards, not of metal; seats; clothing cabinets” in International Class 20.³

Following issuance of the final refusal, Applicant timely filed a notice of appeal and request for reconsideration. The Board suspended the appeal. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. Applicant and the Examining Attorney then filed briefs.

We concentrate our analysis on the registered standard-character mark AJ identified in Registration No. 4006907 for “Lighting fixtures; HID lighting fixtures.” If a likelihood of confusion is found as to this registration, it is unnecessary to consider the other cited registration. Conversely, if likelihood of confusion is not found, we would not find likelihood of confusion as to the other cited registration. *See, e.g., In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

I. Evidentiary Issues

The Examining Attorney objects to Applicant’s submission with its appeal brief of the following evidence as untimely: a list of applications and registrations from the Trademark Electronic Search System (TESS), copies of Office actions associated with two of the listed registrations, and three footnotes consisting of website addresses for dictionary definitions of the word “furniture,” as well as arguments related to the foregoing. In its brief, Applicant relies on this evidence to argue that the cited mark AJ is weak and that Applicant’s goods are unrelated to the goods listed in cited Registration Nos. 4861414 and 4861415.

³ Registered December 1, 2015.

The record in an application should be complete prior to the filing of an appeal. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). In addition, a list of registrations is not proper evidence of third-party registrations. *See, e.g., In re Promo Ink*, 78 USPQ2d 1301, 1304 (TTAB 2006); *In re Dos Padres, Inc.*, 49 USPQ2d 1860, 1861 n.2 (TTAB 1998). To make registrations of record, copies of the registrations or the electronic equivalent thereof (i.e., screenshots or electronic copies of the registrations taken from an electronic database of the USPTO such as TSDR) must be submitted. *In re Ruffin Gaming, LLC*, 66 USPQ2d 1924, 1925 n.3 (TTAB 2002); *In re Smith & Mehaffey*, 31 USPQ2d 1531, 1532 n.3 (TTAB 1994). Insofar as the Examining Attorney has timely interposed an objection to Applicant's late-filed evidence with its brief, the objection is sustained, and the TESS list and Office action evidence submitted concurrently with Applicant's appeal brief has been given no consideration. *See In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1744 (TTAB 2018), *aff'd per curiam*, 777 F. App'x 516 (Fed. Cir. 2019); *In re Fiat Grp. Mktg. & Corp. Commc'ns S.p.A*, 109 USPQ2d 1593, 1596 (TTAB 2014).⁴ In view thereof, we also have not considered Applicant's argument that the above evidence shows that the cited mark AJ is weak and entitled to only a narrow scope of protection.

⁴ The correct procedure would have been for Applicant, prior to filing its appeal brief, to have filed a separately captioned request for remand with a showing of good cause with printouts of the third-party registrations and Office actions from a USPTO database to make the evidence properly of record. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") § 1207.02 (2021).

In view of the fact that we are focusing on cited Registration No. 4006907 and not the remaining other registrations, the Examining Attorney's objection to the hyperlinks to websites for dictionary definitions of "furniture" is moot.

II. Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) ("*DuPont*"). *See also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We must consider each *DuPont* factor for which there is evidence or argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). When analyzing these factors, the overriding concerns are not only to prevent buyer confusion as to the source of the goods, but also to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993).

Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *Shell Oil*, 26 USPQ2d at 1688 ("the various evidentiary factors may play more or less weighty roles in any particular determination"). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (quoting

Herbko Int'l, Inc. v. Kappa Books, Inc., 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002); *see also In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). These factors, and the others, are discussed below.

A. Strength of the Cited Mark

In determining the strength of a cited mark, we consider both its inherent strength, based on the nature of the mark itself, and, if there is evidence in the record of marketplace recognition of the mark, its commercial strength. *See In re Chippendales USA, Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength”); *Top Tobacco, L.P. v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1171-72 (TTAB 2011) (the strength of a mark is determined by assessing its inherent strength and its commercial strength); *Tea Bd. of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006).

Applicant postulates that the cited mark AJ is commercially weak and entitled to only a narrow scope of protection due to prevalent use by third-parties. Evidence of third-party uses may show that “customers have become so conditioned by a plethora of such similar marks that customers have been educated to distinguish between different such marks on the bases of minute distinctions.” *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d

1689, 1694 (Fed. Cir. 2005). *See also Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675-76 (Fed. Cir. 2015) (internal citations omitted). Here, however, Applicant has introduced no evidence of third-party uses from websites of AJ or AJ formative marks for lighting fixtures or similar goods pertaining to the diminished commercial strength of the cited mark.

With regard to conceptual strength, when properly made of record, third-party registrations alone may be relevant, in the manner of dictionary definitions, “to prove that some segment of the [marks] has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Juice Generation*, 115 USPQ2d at 1675 (internal quotation marks omitted). Since we have sustained the Examining Attorney’s objections, other than the cited registrations, we have no admissible third-party registration evidence that might demonstrate the inherent weakness of the cited mark as a source identifier. The three cited registrations, owned by two different entities, do not rise to the level of demonstrating that AJ is conceptually weak. Nor do we have evidence in the record such as dictionary definitions pertaining to the meaning of “AJ.”

For these reasons, Applicant has not shown that the cited mark has been weakened by third-party registrations or uses of similar marks by competitors in the industry offering the same or similar goods. We note, by contrast, that in *Juice Generation*, there were at least twenty-six relevant third-party uses or registrations

of record, 115 USPQ2d at 1672 n. 1, and in *Jack Wolfskin*, there were at least fourteen, 116 USPQ2d at 1136 n.2. In view of its registration on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act, we therefore accord the cited mark AJ “the normal scope of protection to which inherently distinctive marks are entitled.” *Bell’s Brewery, Inc. v. Innovation Brewing*, 125 USPQ2d 1340, 1347 (TTAB 2017).

B. The Marks

The first *DuPont* factor involves an analysis of the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *Palm Bay*, 73 USPQ2d at 1692 (citing *DuPont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *Inn at St. John’s*, 126 USPQ2d at 1746 (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)). *Accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted).

“The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012). Our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re Nat’l Data Corp.*, 753 F.2d

1056, 224 USPQ 749, 751 (Fed. Cir. 1985). *See also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”).

Applicant argues that the marks AJ TABLE and AJ have notable differences in sound, appearance, connotation and commercial impression. Applicant maintains that its mark AJ TABLE contains a key distinction with the additional word TABLE. Applicant urges the Board to find that this word differentiates the marks not only visually and audibly, but also in connotation and commercial impression. As Applicant maintains, by adding TABLE to its mark, it engenders a different meaning by providing critical information about Applicant’s product to the consumer.

Applicant’s arguments are unpersuasive. Although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012). Applicant’s mark commences with the arbitrary term AJ, making it the dominant element. It is well established that consumers are generally more inclined to focus on the first word in a trademark. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1049 (Fed. Cir. 2018) (finding “the identity of the marks’ two initial words is particularly significant because consumers typically notice those words first”); *Palm Bay*, 73 USPQ2d at 1692 (finding similarity between VEUVE ROYALE and two VEUVE CLICQUOT marks in part because “VEUVE . . . remains a ‘prominent feature’ as the first word in the mark and the first word to

appear on the label”); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed Cir. 1992) (finding similarity between CENTURY 21 and CENTURY LIFE OF AMERICA in part because “consumers must first notice th[e] identical lead word”). Consumers, focusing on the first shared common element, are likely to perceive the applied-for mark AJ TABLE as a modification of the cited mark AJ. *See, e.g., In re Mighty Leaf Tea*, 601 F.3d, 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010) (affirming Board decision that ML is likely to be perceived as a shortened version of ML MARK LEES, and noting that “the presence of an additional term in the mark does not necessarily eliminate the likelihood of confusion if some terms are identical.”); *Big M Inc. v. U.S. Shoe Corp.*, 228 USPQ 614, 616 (TTAB 1985) (“[W]e cannot ignore the propensity of consumers to often shorten trademarks and, in the present case, this would be accomplished by dropping the ‘T.H.’ in referring to registrant’s stores [T.H. MANDY].”).

We also find that AJ is the dominant term in Applicant’s mark because the disclaimed word TABLE is highly descriptive or generic in connection with Applicant’s identified “table lamps.” Disclaimed matter that is descriptive of or generic for a party’s goods is typically less significant or less dominant when comparing marks. *In re Detroit Athletic Co.*, 128 USPQ2d at 1050 (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)). As such, the marks are similar in sound and appearance.

In addition, we are unpersuaded by Applicant’s argument that consumers are likely to perceive AJ TABLE as having an entirely different connotation and

commercial impression when compared with Registrant's single term mark AJ. Consumers familiar with the cited mark AJ are likely to perceive Applicant's mark AJ TABLE as a variant mark denoting a particular product line. *See, e.g., Schieffelin & Co. v. Molson Cos., Ltd.*, 9 USPQ2d 2069, 2073 (TTAB 1989) ("Those consumers who do recognize the differences in the marks may believe that applicant's mark is a variation of opposer's mark that opposer has adopted for use on a different product."); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1271 (TTAB 2009) (VANTAGE TITAN "more likely to be considered another product from the previously anonymous source of TITAN medical diagnostic apparatus, namely, medical ultrasound devices"). Applicant's and Registrant's marks therefore engender highly similar connotations and commercial impressions as well.

Although we have pointed to the identical dominant portions of the marks, we acknowledge the fundamental rule that the marks must be considered in their entirety. *See Jack Wolfskin*, 116 USPQ2d at 1134; *Massey Junior Coll., Inc. v. Fashion Inst. of Tech.*, 492 F.2d 1399, 181 USPQ 272, 273-74 (CCPA 1974). We note the specific differences pointed out by Applicant. These differences, however, are outweighed by the similarities of the marks. Under such circumstances, where Applicant's mark incorporates the entirety of Registrant's mark, the similarity of the marks increases. *See China Healthways Inst. Inc. v. Xiaoming Wang*, 491 F.3d 1337, 83 USPQ2d 1123, 1125 (Fed. Cir. 2007) (applicant's mark CHI PLUS is similar to opposer's mark CHI both for electric massagers); *The Wella Corp. v. California Concept Corp.*, 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977) (CALIFORNIA

CONCEPT and surfer design for men's cologne, hair spray, conditioner and shampoo is similar to CONCEPT for cold permanent wave lotion and neutralizer); *Coca-Cola Bottling Co. of Memphis, Tennessee, Inc. v. Joseph E. Seagram and Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (CCPA 1975) (applicant's mark BENGAL LANCER for club soda, quinine water and ginger ale is likely to cause confusion with BENGAL for gin). Thus, when comparing the marks overall, they are similar in sound, meaning, connotation and overall commercial impression. The similarity of the marks weighs in favor of finding a likelihood of confusion.

C. The Goods

Next we compare the goods as they are identified in the involved application and cited registration, the second *DuPont* factor. *See Detroit Athletic Co.*, 128 USPQ2d at 1050; *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). The goods need not be identical or even competitive to find a likelihood of confusion. *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000). They need only be "related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods] emanate from the same source." *Coach Servs.*, 101 USPQ2d at 1722 (quoting *7-Eleven Inc. v.*

Wechsler, 83 USPQ2d 1715, 1724 (TTAB 2007)).

Evidence of relatedness might include news articles and/or evidence from computer databases showing that the relevant goods are used together or used by the same purchasers; advertisements showing that the relevant goods are advertised together or sold by the same manufacturer or dealer; and/or copies of prior use-based registrations of the same mark for both an applicant's goods and the goods listed in the cited registration. *See, e.g., Davia*, 110 USPQ2d at 1817 (finding pepper sauce and agave related where evidence showed both were used for the same purpose in the same recipes and thus consumers were likely to purchase the products at the same time and in the same stores). In assessing the relatedness of the goods, the more similar the marks at issue, the less similar the goods need to be to support a finding of likelihood of confusion. *Shell Oil*, 26 USPQ2d at 1689; *Gen. Mills, Inc. v. Fage Dairy Processing Indus. S.A.*, 100 USPQ2d 1584, 1597 (TTAB 2011); *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001).

Applicant argues that because the identification in the cited registration, "Lighting fixtures; HID lighting fixtures," does not explicitly include "table lamps," the Examining Attorney cannot presume that goods are related solely because they perform the same function of providing artificial light. In support thereof, Applicant relies on *In re Princeton Tectonics, Inc.*, 95 USPQ2d 1509 (TTAB 2010) where the Board reversed a Section 2(d) refusal based on the determination that "personal headlamps" were unrelated to "lighting fixtures." In reaching that decision, the Board

disagreed with the Examining Attorney's assumption that "lighting fixtures" could "include a personal headlamp, as such goods are placed in a fixed position on one's head or helmet." *Id.* at 1510. The Board reasoned that "... the mere fact that both types of goods at issue here emit and provide light is not a sufficient basis for us to conclude that the goods are related. The goods, as identified, are sufficiently different in their uses to require proof that they are related." *Id.* The Board also found that the website evidence made of record by the Examining Attorney lacked probative weight because it "either fails to identify the particular types of goods at issue here, or the evidence is from sources which sell a broad range of varied and unrelated goods online." *Id.* For example, evidence from the Alibaba.com website made of record in *Princeton Tectonics* included nearly 40 different suppliers of various types of products. *Id.* at 1511. In this case, Applicant analogizes "table lamps" to "personal headlights" insofar as both are "movable goods that are not permanently installed in a building or other property" to distinguish its goods from "lighting fixtures."⁵ Likewise, Applicant dismisses the probative weight of Examining Attorney's website evidence, arguing that those retailers also provide a wide variety of goods.

The *Princeton Tectonics* factual record is distinguishable from the record before us.⁶ Here the record supports a finding that "table lamps" and "lighting fixtures" are

⁵ Applicant's Brief, pp. 9-10; 11 TTABVUE 10-11.

⁶ The same holds true with regard to the two non-precedential opinions cited by Applicant: *In re Frank's Nursery & Crafts, Inc.*, Serial No. 74595548 (TTAB 1996) and *In re Emissive Energy Corporation*, Serial No. 78358172 (TTAB 2006). See *In re tapio GmbH*, 2020 USPQ2d 1138, at *10 n.30 (TTAB 2020) ("Generally, the practice of citing non-precedential opinions is not encouraged."); *In re Morrison & Foerster LLP*, 110 USPQ2d 1423, 1427 n.6 (TTAB 2014)

at a minimum, related and complementary goods, if not legally identical. The term “lighting fixtures” includes any type of lighting fixture including those affixed to a ceiling or wall such as flush mount and semi-flush mount ceiling lights and chandeliers or table and floor lamps.⁷ However, even assuming that the term “lighting fixtures” does not encompass “table lamps” but only those items affixed to a ceiling or wall such as flush mounts, there is ample evidence in the record to show that the goods are related. The Examining Attorney submitted evidence from the home furnishing and décor websites of Pottery Barn, Crate & Barrel, Ethan Allen, Minka Group, Arhaus, Bed Bath & Beyond, Regina Andrew, Bradburn Home, Jonathan Adler, Fritz Hansen, Bassett Mirror Company, Kenroy Home, Hubbardton Forge, and Currey & Company, demonstrating that it is not uncommon for such entities to manufacture and offer for sale table lamps and lighting fixtures (e.g. chandeliers, flush mount and semi-flush mount fixtures) either via their self-branded direct-to-consumer websites or in their own self-branded brick-and-mortar retail

(“Although parties may cite to non-precedential decisions, the Board does not encourage the practice.”).

⁷ Excerpt from the Hubbardton Forge website www.hubbardtonforge.com accessed on October 14, 2021 (“Our Semi-flush/Flush category is expansive. It includes any lighting fixture that is close to the ceiling). Request for Reconsideration, p. 40.

stores.⁸ By way of illustration, note the following excerpts from the Regina Andrew,⁹ Hubbardton Forge¹⁰ and Bed Bath & Beyond¹¹ websites:

<https://www.reginaandrew.com/Lighting/Lamps/Table-Lamps?page=4> 03/14/2021 03:28:21 PM

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Category

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Quatrefoil Alabaster Table Lamp Small \$525.00

Joan Alabaster Table Lamp Large \$625.00

Gear Alabaster Table Lamp \$775.00

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⁸ See September 2, 2020 Office Action, pp. 59-104 (excerpts from Pottery Barn www.potterybarn.com, Crate and Barrel crateandbarrel.com, and Ethan Allen www.ethanallen.com websites accessed on September 2, 2020); March 15, 2021 Office Action pp. 6-89 (excerpts from Minka Group www.minkagroup.net, Arhaus www.arhaus.com, Bed Bath & Beyond www.bedbathbeyond.com, Regina Andrew www.reginaandrew.com, Bradburn Home www.bradburnhome.com, Jonathan Adler www.jonathanadler.com accessed on March 14, 2021); October 18, 2021 Denial of Applicant's Request for Reconsideration, pp. 2-95 (Bassett Mirror Company www.bassettmirror.com, Kenroy Home www.kenroyhome.com, Hubbardton Forge www.hubbardtonforge.com and Currey & Company www.curreyandcompany.com accessed on October 14, 2021). The excerpt from the Fritz Hansen website attached to the March 15, 2021 Office Action appears to be from England so we have not considered this evidence in our decision.

⁹ October 18, 2021 Denial of Applicant's Request for Reconsideration, pp. 23 and 34.

¹⁰ *Id.* at 40.

¹¹ March 15, 2021 Office Action pp. 18-19.



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CEILING

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- Pendants
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Charlotte Chandelier

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Semi-Flush/Flush



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Double Shade Semi-
Flush

126503
Exos Double Shade
Semi-Flush

126505
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Antasia Table Lamp

277660
Brindille Table Lamp

272686
Almost Infinity Table
Lamp

273085
Lino Table Lamp

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This Francesca Chandelier from Bee & Willow is a lovely mix of classic style and rustic charm. Featuring a cascade of weathered washed wooden beads and a hand-finished metal frame, this unique light will become the centerpiece for any room.

- This impressive hanging light will set the stage as a foyer chandelier or as a dining room light fixture



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Details

The Bee & Willow Home Logo Table Lamp brings a classic touch to any room. The white ceramic base is embossed with the chic Bee & Willow logo, and topped with a simple cotton fabric hardback drum shade, for an effortless and timeless design.

- Base is adorned with the Bee & Willow embossed logo giving this piece both a sense of identity and uniqueness in it's details
- 3-way rotary switch
- White glazed ceramic body
- White cotton fabric hardback drum shade
- Uses one 100-watt wax bulb (bulb not included)



This evidence shows that consumers may expect to find Applicant's and Registrant's products as identified in the involved application and cited registration as emanating from a common source or under a single brand name.

Contrary to the online third-party retail evidence from Alibaba presented in *Princeton Tectonics*, the aforementioned evidence is not from "big box" online retailers selling a wide variety of goods from different suppliers but rather from stores and their dedicated direct-to-consumer sales websites specializing in home furnishings and decor. This targeted type of retailing is narrower in scope, and as such is entitled to a higher degree of probative weight. *In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, at *8 (TTAB 2020) ("[T]he fact that more targeted sellers offer goods of both the Registrant and the Applicant tells us that the goods are related."). While some of the website evidence involves house marks, it remains probative to the extent that the house marks do not identify a wide variety of goods, but rather are limited to home furnishings and decor. *Cf. In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988) (in general third-party registrations of house marks are given little probative value in terms of showing that the various goods listed therein are related because they cover such a disparate range of goods). The evidence is relevant inasmuch as it demonstrates that both Applicant's and Registrant's identified goods may originate from the same source.

In addition to being related, the record also shows that table lamps and lighting fixtures are complementary products insofar as some manufacturers offer sub-brands in coordinating designs and styles. For instance, Minka Group offers a "spiked" flush

mount lighting fixture and a similarly styled “spiked” table lamp under the designation “George Kovacs;”¹² designer Jonathan Adler offers flush mount lighting fixtures and a table lamp under the designation “Milano” and chandeliers and table lamps under the designation “Globo;”¹³ Fritz Hansen offers designer Christian Dell’s “Kaiser Idell” table lamp and pendant lighting fixture;¹⁴ and Bed Bath & Beyond offers a chandelier and a table lamp under the designation “Bee & Willow.”¹⁵ For this reason, consumers looking to complete an interior design project in a particular style such as art deco or mission may also look for table lamps and lighting fixtures offered under the same mark. *See In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984) (holding bread and cheese to be related because they are often used in combination and noting that “[c]omplementary use has long been recognized as a relevant consideration in determining a likelihood of confusion.”); *Ox Paperboard*, 2020 USPQ2d 10878, at *8 (“paperboards used for protective packaging” and “corrugated containers” are complementary items used and sold together in packaging products for shipment).

Thus, we need not rely on any presumption that the goods are inherently related because they both produce artificial light. Rather, there is substantial evidence in the record to support a finding that “table lamps” and “lighting fixtures” are related and

¹² *Id.* at 6-11.

¹³ *Id.* at 86-88.

¹⁴ *Id.* at 90-91.

¹⁵ *Id.* at 18-19.

complementary in nature. Accordingly, this second *DuPont* factor also weighs in favor of finding of a likelihood of confusion.

D. The Similarity or Dissimilarity of Established, Likely-To-Continue Trade Channels and Classes of Consumers

We direct our attention now to the similarity or dissimilarity of established, likely-to-continue trade channels and classes of consumers, the third *DuPont* factor. Applicant contends that the marketing environments are “very different because the products themselves are used for vastly different and specific purposes.”¹⁶ As Applicant maintains, while Registrant “exclusively target business owners, homeowners, and construction workers that have the knowledge of assembly and electrical work” by contrast Applicant’s table lamps are “marketed to those who appreciate architecture, art, and appearance as opposed to having to understand the functionality and operative construction.”¹⁷ Applicant contends that “consumers looking for inexpensive functional goods as opposed to a high-end luxury table lamp designed by a world-renowned architect” will not confuse the source of the goods.¹⁸ According to the record, the Danish designer, Arne Jacobsen, originally designed what Applicant now markets as the “AJ Table Lamp” for the SAS Royal Hotel in Copenhagen.¹⁹ “The base of the table lamp was originally intended to accommodate an ashtray but now contributes solely to the design.”²⁰

¹⁶ Applicant’s Brief, p. 12; 11 TTABVUE 13.

¹⁷ *Id.*

¹⁸ Applicant’s Brief, p. 6; 11 TTABVUE 7.

¹⁹ Denial of Applicant’s Request for Reconsideration, p. 29.

²⁰ *Id.* at 30.

We cannot assume, as Applicant argues, that Registrant's lighting fixtures are restricted to purchasers, such as construction workers and do-it-yourselfers who know how to install electrical fixtures. Likewise, we cannot assume that consumers of Applicant's table lamps are limited to those consumers with an appreciation for mid-century design aesthetics. Neither the registration nor the application contains any restriction on the channels of trade or classes of purchasers. As such, the goods presumptively move in all normal trade channels and to the same consumers that purchase such goods. *See, e.g., Detroit Athletic Co.*, 128 USPQ2d at 1052 (“the registration does not set forth any restrictions on use and therefore cannot be narrowed by testimony that the applicant's use is, in fact, restricted to a particular class of purchasers”) (citation omitted); *Citigroup*, 98 USPQ2d at 1261 (“Because the parties' trade channels and classes of consumers are unrestricted, the third and fourth DuPont factors also favor Citigroup.”). The evidence discussed in the preceding section shows that Applicant's and Registrant's goods are sold through the same retail brick-and-mortar and online furnishing and decor stores to the same classes of consumers. This *DuPont* factor also weighs in favor of finding a likelihood of confusion.

E. Conditions of Sale

Lastly, we consider the fourth *DuPont* factor, the conditions under which the goods are likely to be purchased, *e.g.*, whether on impulse or after careful consideration, as well as the degree, if any, of sophistication of the consumers. Purchaser sophistication or degree of care may tend to minimize likelihood of confusion. Conversely, impulse

purchases of inexpensive items may tend to have the opposite effect. *Palm Bay*, 73 USPQ2d at 1695.

Applicant argues that “Applicant’s high-end, luxurious, and famous table lamps and the cited products are plainly different things, different in size, shape, concept, purpose, appearance, and price.”²¹ Applicant’s arguments are misplaced. Here, the identifications in the application and cited registration identify goods that are not restricted by target market, price or consumer sophistication. As noted above, we cannot assume, as Applicant urges, that these items are rendered to different classes of buyers, in different marketing contexts or at different prices. *See Stone Lion*, 110 USPQ2d at 1161; *Octocom*, 16 USPQ2d at 1787 (“The authority is legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.”); *Paula Payne Prods. v. Johnson Publ’g Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) (“Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods”). We must assume that the types of buyers overlap to include both the interior designer seeking minimalist Danish styled lighting products as well as the ordinary bargain purchaser. “Board precedent requires the decision to be based ‘on the least sophisticated potential purchasers.’” *See Stone Lion*, 110 USPQ2d at 1163. Ordinary consumers are likely to exercise only

²¹ Applicant’s Brief, p. 11; 11 TTABVUE 12.

ordinary care, and given the lack of price restrictions in the identifications, may even buy relatively inexpensive goods of this type on impulse. *See Recot*, 54 USPQ2d at 1899 (“When products are relatively low-priced and subject to impulse buying, the risk of likelihood of confusion is increased because purchasers of such products are held to a lesser standard of purchasing care.”).

Accordingly, this *DuPont* factor is neutral.

III. Conclusion

We have carefully considered all of the evidence made of record, as well as all of the arguments related thereto. The similarities of the marks coupled with the related goods, overlapping trade channels and classes of consumers exercising ordinary care lead us to the conclusion that prospective consumers are likely to confuse the involved goods as originating from or associated with or sponsored by the same entity.

Decision: The Section 2(d) refusal to register Applicant’s mark is affirmed with regard to cited Registration No. 4006907. In view thereof, we need not reach the merits of the Section 2(d) refusal with respect to the remaining two cited Registration Nos. 4861414 and 4861415.